

AVL POWERTRAIN ENGINEERING, INC. vs. FAIRBANKS MORSE ENGINE
Stephen Plewa on 10/14/2015

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WISCONSIN

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5 AVL POWERTRAIN ENGINEERING, INC.,

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7 Plaintiff/Counterclaim Defendant,

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9 vs.

Case No. 14-cv-877

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11 FAIRBANKS MORSE ENGINE, a division of

12 COLTEC INDUSTRIES, INC.,

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14 Defendant/Counterclaim Plaintiff.

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18 The videotaped deposition of STEPHEN PLEWA was
19 taken by the Defendant/Counterclaim Plaintiff on Wednesday,
20 October 14, 2015, at 500 Woodward Avenue, Suite 2500,
21 Detroit, Michigan, at 2:45 p.m.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 KERR, RUSSELL AND WEBER, PLC</p> <p>4 By: Fred K. Herrmann</p> <p>5 500 Woodward Avenue, Suite 2500</p> <p>6 Detroit, Michigan 48226</p> <p>7 (313) 961-0200</p> <p>8 fherrmann@kerr-russell.com</p> <p>9 Appearing on behalf of the</p> <p>10 Plaintiff/Counterclaim Defendant.</p> <p>11</p> <p>12 ROBINSON BRADSHAW & HINSON, P.A.</p> <p>13 By: R. Steven DeGeorge</p> <p>14 101 North Tryon Street, Suite 1900</p> <p>15 Charlotte, North Carolina 28246</p> <p>16 (704) 377-2536</p> <p>17 sdegeorge@rbh.com</p> <p>18 Appearing on behalf of the</p> <p>19 Defendant/Counterclaim Plaintiff.</p> <p>20</p> <p>21 Also Present: Ms. Lori A. Brown</p> <p>22 Mr. Tracy Clegg, Videographer</p> <p>23</p> <p>24 Reported by: Elizabeth G. LaBarge, CSR 4467</p> <p>25 Certified Court Reporter</p>	<p>1 Wednesday, October 14, 2015</p> <p>2 Detroit, Michigan</p> <p>3 2:45 p.m.</p> <p>4 * * *</p> <p>5 VIDEOGRAPHER: We are now on the record. This is</p> <p>6 the beginning of media number one in the deposition of</p> <p>7 Steve Plewa being taken on October 14th, 2015. We are</p> <p>8 here in the matter of AVL Powertrain Engineering versus</p> <p>9 Fairbanks Morse Engine, a division of Coltec Industries,</p> <p>10 Incorporated, Case Number 14-cv-877. The time on the</p> <p>11 video monitor is 2:45 p.m.</p> <p>12 My name is Tracy Clegg and I am the videographer.</p> <p>13 The court reporter is Beth LaBarge. We are here with</p> <p>14 Huseby Global Litigation.</p> <p>15 Counsel, please introduce yourself, after which the</p> <p>16 court reporter will swear in the witness.</p> <p>17 MR. HERRMANN: Fred Herrmann for AVL.</p> <p>18 MR. DeGEORGE: Steve DeGeorge for the Defendant.</p> <p>19 COURT REPORTER: And I will swear you in if you'll</p> <p>20 raise your right hand.</p> <p>21 Do you solemnly swear or affirm the testimony you</p> <p>22 are about to give will be the truth, the whole truth,</p> <p>23 and nothing but the truth?</p> <p>24 THE WITNESS: I do.</p> <p>25</p>
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<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4</p> <p>5 STEPHEN PLEWA</p> <p>6</p> <p>7 Examination by Mr. DeGeorge 5</p> <p>8 Examination by Mr. Herrmann 26</p> <p>9 Re-examination by Mr. DeGeorge 29</p> <p>10</p> <p>11</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14</p> <p>15 NUMBER IDENTIFICATION PAGE</p> <p>16 Exhibit 29 Email Re: Emission background 13</p> <p>17 Exhibit 30 Email Re: AVL fuel usage 17</p> <p>18 Exhibit 31 Email Re: Fuel usage spreadsheet 18</p> <p>19 Exhibit 32 Email FM EH&S 19</p> <p>20 Exhibit 33 Email Re: AVL - Beloit air permit</p> <p>21 requirements 23</p> <p>22 (Exhibits are attached hereto.)</p> <p>23 * * *</p> <p>24</p> <p>25</p>	<p>1 STEPHEN PLEWA</p> <p>2 having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 E X A M I N A T I O N</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Mr. Plewa, my name is Steve DeGeorge, I'm one of the</p> <p>7 attorneys in this case representing the Defendant</p> <p>8 FM -- I'll refer to it as FME. It's Fairbanks Morse</p> <p>9 Engine, a division of Coltec, but if I use the term</p> <p>10 "FME," you'll know --</p> <p>11 A I understand.</p> <p>12 Q -- what I'm talking about?</p> <p>13 A Yes, sir.</p> <p>14 Q All right. Have you ever had your deposition taken</p> <p>15 before?</p> <p>16 A No, sir.</p> <p>17 Q Well, it's pretty simple. I'll ask you some questions</p> <p>18 and hopefully you'll do the best you can to answer them.</p> <p>19 If you don't understand a question, either because I</p> <p>20 didn't articulate it clearly or it's just a messy</p> <p>21 question, tell me and I'll --</p> <p>22 A Sure.</p> <p>23 Q -- do my best to --</p> <p>24 A Sure.</p> <p>25 Q -- to ask again in a better way. Mr. Herrmann may</p>

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<p>1 object to some of my questions and if he does, you just</p> <p>2 take your lead from him on what to do in relation to his</p> <p>3 objection.</p> <p>4 A Okay.</p> <p>5 Q I think we'll be pretty short, so we probably won't need</p> <p>6 a break, but if you need to take a break, just let me</p> <p>7 know. And the only thing I ask of you is that we not</p> <p>8 break if there's a question pending.</p> <p>9 A Sure.</p> <p>10 Q Let's begin by if you could just tell me briefly what</p> <p>11 you did to prepare for your deposition today, whether</p> <p>12 you reviewed any documents, for example?</p> <p>13 A Yeah. Approximately two weeks ago reviewed several, a</p> <p>14 stack of documents of emails with -- that corresponded</p> <p>15 with my name on them.</p> <p>16 Q Okay. And did you review those -- where were you</p> <p>17 physically when you reviewed those?</p> <p>18 A We were on site at AVL in Plymouth, Michigan.</p> <p>19 Q All right. And was Mr. Herrmann there with you at the</p> <p>20 time?</p> <p>21 A Yes, sir.</p> <p>22 Q And who else was there?</p> <p>23 A Lori Brown and --</p> <p>24 Q Just the --</p> <p>25 A -- that's it.</p>	<p>1 Q And when did you first become employed by AVL?</p> <p>2 A It's -- it was January, I don't remember the exact date,</p> <p>3 but it was January 2004.</p> <p>4 Q And have you been employed by AVL continuously since</p> <p>5 that time?</p> <p>6 A Yes, sir.</p> <p>7 Q All right. I just want to walk briefly through the</p> <p>8 positions that you've held --</p> <p>9 A Um-hmm.</p> <p>10 Q -- while an AVL employee. What was your first job?</p> <p>11 A I was brought on to be the quality document manager.</p> <p>12 Q And what did that entail?</p> <p>13 A Basically, AVL at the time, AVL was in the process of</p> <p>14 obtaining the ISO certifications for ISO 9001 and 17025</p> <p>15 and 14001 and so they were in the process of creating</p> <p>16 documents to adhere to those ISO standards.</p> <p>17 Q Okay. And what was your -- I assume during the course</p> <p>18 of the roughly 12 years you've been with -- more than</p> <p>19 12 years, I guess now, that you've been with AVL, that</p> <p>20 you've been promoted one or more times?</p> <p>21 A Yes.</p> <p>22 Q Okay. What was your next -- your second position with</p> <p>23 AVL?</p> <p>24 A Approximately four months after being hired, I was</p> <p>25 approached by HR and they wanted me to also assume the</p>
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<p>1 Q -- three of you?</p> <p>2 A Yep.</p> <p>3 Q Thank you. Do you recall any of the specific documents</p> <p>4 you reviewed?</p> <p>5 A There's just one document that I recall that sticks out</p> <p>6 in my head.</p> <p>7 Q And what document is that?</p> <p>8 A It's one where I had laid out a list of items that Julie</p> <p>9 Mosley and myself had previously discussed.</p> <p>10 Q I think I have that one, we'll probably talk briefly</p> <p>11 about it.</p> <p>12 Why don't we just talk briefly about your</p> <p>13 educational and work backgrounds. Where and when did</p> <p>14 you graduate from college?</p> <p>15 A I have no college degree.</p> <p>16 Q All right.</p> <p>17 A Yeah.</p> <p>18 Q All right. Did you attend college?</p> <p>19 A I took three courses, but that was just in the past five</p> <p>20 or six years.</p> <p>21 Q Okay. When did you graduate from high school?</p> <p>22 A I earned my GED in 1997.</p> <p>23 Q And what was your first job after earning your GED?</p> <p>24 A I was a dynamometer technician with Watson Engineering</p> <p>25 in Taylor, Michigan.</p>	<p>1 role of -- as quality manager and then environmental</p> <p>2 health and safety manager, as well.</p> <p>3 Q Okay. And tell me what your responsibilities were -- I</p> <p>4 assume you took that opportunity?</p> <p>5 A Yes, sir.</p> <p>6 Q All right. What were your responsibilities as EHS</p> <p>7 manager?</p> <p>8 A Focused on the environment with regards to air</p> <p>9 permitting, with regards to waste disposals at the</p> <p>10 facilities, employee safety, and quality, you know,</p> <p>11 documenting the processes and procedures to support the</p> <p>12 environmental health and safety standards.</p> <p>13 Q Let's focus on air permitting, what -- let's talk about</p> <p>14 that in a little greater detail. What were your -- what</p> <p>15 were your duties or responsibilities as EHS manager in</p> <p>16 relation to air permitting?</p> <p>17 A I at the time, I worked with an outside consultant that</p> <p>18 AVL had already had on -- hired, I guess, is the way you</p> <p>19 would put it, so I worked with them to help establish</p> <p>20 what types of fuels we would burn, how much fuels we</p> <p>21 would burn, and just helping getting the proper testing</p> <p>22 for the State of Michigan in place and following through</p> <p>23 with documents.</p> <p>24 Q And did AVL have its own air permit for its Michigan</p> <p>25 facility?</p>

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<p>1 A Yes, they had -- they had one for Plymouth and they were</p> <p>2 in the process of completing the one for Ann Arbor. We</p> <p>3 have two locations, one in Plymouth and one in</p> <p>4 Ann Arbor.</p> <p>5 Q And who was the outside consultant that you worked with?</p> <p>6 A At that time, it was Vision Environmental.</p> <p>7 Q When you say "at that time," what time frame are we</p> <p>8 talking about?</p> <p>9 A From the onset. It really, it still is. Vision</p> <p>10 Environmental was bought up by a company and they go by</p> <p>11 GZA now.</p> <p>12 Q G as in George, Z as in zebra, A as in Allen?</p> <p>13 A Yes, sir.</p> <p>14 Q And where are they located?</p> <p>15 A They're -- they have a branch that's not too far from us</p> <p>16 in Plymouth, Michigan. I believe their headquarters is</p> <p>17 out of state, though.</p> <p>18 Q And is there a particular person at -- I'll just refer</p> <p>19 to it as Vision/GZA, okay?</p> <p>20 A Sure, sure.</p> <p>21 Q Is there a particular person in relation to air</p> <p>22 permitting that -- or people that you've worked with at</p> <p>23 Vision/GZA --</p> <p>24 A Yes.</p> <p>25 Q -- over the years?</p>	<p>1 A No.</p> <p>2 Q Environ, does that ring a bell?</p> <p>3 A No.</p> <p>4 Q Thank you. All right. So then you took on added</p> <p>5 responsibilities as EHS manager, I'm sorry if I asked</p> <p>6 you and you already answered, roughly when, four months</p> <p>7 after you started, is that --</p> <p>8 A It was --</p> <p>9 Q -- what you said?</p> <p>10 A -- approximately four months after I --</p> <p>11 Q Okay.</p> <p>12 A -- started in 2004.</p> <p>13 Q And is that something you still do today?</p> <p>14 A Yes.</p> <p>15 Q All right. What -- jumping to the -- well, let's talk</p> <p>16 about the time frame of 2007 to 2011. What was your</p> <p>17 title and what were your duties in that time frame? As</p> <p>18 best as you can --</p> <p>19 A Yeah --</p> <p>20 Q -- recall?</p> <p>21 A -- no, it was -- it was the quality manager and the</p> <p>22 environmental health and safety manager.</p> <p>23 Q Okay. And have your responsibilities or title changed</p> <p>24 since 2011?</p> <p>25 A Yes.</p>
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<p>1 A Yes.</p> <p>2 Q And who are those people?</p> <p>3 A Jamie Boothby.</p> <p>4 Q Spell that, Boothby?</p> <p>5 A Boothby is B-o-o-t-h-b-y.</p> <p>6 Q Jamie, is Jamie a male or a female?</p> <p>7 A Yes, sir, he's a male.</p> <p>8 Q All right, Jamie Boothby. Who else?</p> <p>9 A And his direct boss, Tony Percha.</p> <p>10 Q All right. One more time, how do you spell that?</p> <p>11 A P-e-r-c-h-a.</p> <p>12 Q Over the last 12 years, are those essentially the only</p> <p>13 two people that you worked with at Vision Environmental</p> <p>14 and GZA as it relates to air permitting issues?</p> <p>15 A Yes, sir.</p> <p>16 Q All right. Over that period of time, are there other</p> <p>17 outside environmental consulting firms with whom you</p> <p>18 have worked in relation to air permitting issues?</p> <p>19 A There was one other company, but I didn't personally</p> <p>20 work with them.</p> <p>21 Q Do you recall what that company was?</p> <p>22 A I don't recall what that company's name was.</p> <p>23 Q Does John McDonald ring a bell?</p> <p>24 A No, sir.</p> <p>25 Q No?</p>	<p>1 Q Okay. Tell me what the next --</p> <p>2 A So we've --</p> <p>3 Q -- change was?</p> <p>4 A -- added on to that now and now I'm the dyno -- or</p> <p>5 Plymouth dyno lab supervisor.</p> <p>6 Q So you're the dyno lab supervisor in addition to</p> <p>7 your --</p> <p>8 A Yes, sir.</p> <p>9 Q -- the previous duties?</p> <p>10 A Yes, sir.</p> <p>11 Q I'm sorry, and this is as much my fault as it is yours,</p> <p>12 but we have to try to talk one at a time because</p> <p>13 otherwise the court reporter will get really mad at us</p> <p>14 because she can't take down what two people are saying.</p> <p>15 A Okay.</p> <p>16 MR. DeGEORGE: Let's do Defendant 29.</p> <p>17 (Exhibit 29 was marked for identification.)</p> <p>18 BY MR. DeGEORGE:</p> <p>19 Q Mr. Plewa, you've been handed what the court reporter</p> <p>20 has marked as Defendant's -- or yeah, Defendant's</p> <p>21 Exhibit 29, and it's an email from Joe Eves at -- well,</p> <p>22 it says EnPro, but at Fairbanks Morse, which is an EnPro</p> <p>23 company.</p> <p>24 A Um-hmm.</p> <p>25 Q You know who Joe Eves is, right?</p>

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<p>1 A I don't know him personally, no.</p> <p>2 Q Okay. And you do know that he's with Fairbanks Morse,</p> <p>3 or at least was back in 2008?</p> <p>4 A I heard the name back then, yeah.</p> <p>5 Q All right. And this is an email that Mr. Eves sent to</p> <p>6 Mr. -- to Mike Golda and to Dwight Hansell and to Andrew</p> <p>7 Smart, all of whom were with AVL at the time, correct?</p> <p>8 A Yes, sir.</p> <p>9 Q Okay. I guess my first question to you is do you</p> <p>10 remember ever seeing this document before?</p> <p>11 A This summary?</p> <p>12 Q Either the email or the attached memo?</p> <p>13 A I don't recall seeing it.</p> <p>14 Q Now, let's talk a little bit about the memo. Even</p> <p>15 though you don't recall having seen it, I want to ask</p> <p>16 you about a couple of the things that are mentioned in</p> <p>17 it to see if you were aware of these facts.</p> <p>18 The attached memo is from ERM, which is an</p> <p>19 environmental engineering firm, and it was sent by ERM</p> <p>20 to Julie Mosley. Do you know who Julie Mosley was?</p> <p>21 A Yes, sir, I do.</p> <p>22 Q And who was she?</p> <p>23 A She was my environmental contact with Fairbanks Morse.</p> <p>24 Q Okay. And this memo is dated April 22, 2008. And</p> <p>25 there's a number of references in this memorandum and</p>	<p>1 A Yes, sir.</p> <p>2 Q Do you recall whether it was be -- well, let me give you</p> <p>3 the date. FME and AVL entered into their contract,</p> <p>4 which is called the master agreement, on August 28,</p> <p>5 2008. Do you recall whether, using that date as a</p> <p>6 reference point, do you recall whether you had seen the</p> <p>7 FME air permit before that date?</p> <p>8 A No, sir, I don't recall.</p> <p>9 Q You just don't recall one way or the other?</p> <p>10 A Right.</p> <p>11 Q You do know that the air permit -- or do you know that</p> <p>12 the FME air permit is accessible online at the Wisconsin</p> <p>13 DNR website?</p> <p>14 A Yes, sir.</p> <p>15 Q Here's a document, Mr. Plewa, that was marked this</p> <p>16 morning as Defendant's Exhibit 3.</p> <p>17 By the way, this Exhibit 29, particularly the memo</p> <p>18 from ERM, is that something that you recall looking at</p> <p>19 in preparation for your deposition?</p> <p>20 A No, sir.</p> <p>21 Q The document, this one-page document you have was</p> <p>22 marked at Mr. Vietinghoff's deposition as Defendant's</p> <p>23 Exhibit 3 and I'm trying to figure out who prepared this</p> <p>24 document.</p> <p>25 Have you ever seen this before or do you know who</p>
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<p>1 I'm not -- if you want to read the whole thing, you're</p> <p>2 free to, but I don't think you'll need to to answer this</p> <p>3 question. There's a number of references in the</p> <p>4 memorandum to fuel limit or fuel limitation. Do you</p> <p>5 know what that's in reference to?</p> <p>6 A I know what fuel ref -- or fuel limitations are a</p> <p>7 reference of, yes.</p> <p>8 Q Okay. And do you recall whether there was a fuel</p> <p>9 limitation in relation to the OP building at the</p> <p>10 Fairbanks Morse plant in Beloit?</p> <p>11 A Yes, I do recall.</p> <p>12 Q Okay. Do you recall when you became aware of the fuel</p> <p>13 limitation -- well, let me step back.</p> <p>14 Is it your understanding that the fuel limitation</p> <p>15 at the OP building at the Beloit plant was something</p> <p>16 that was contained in FME's air permit?</p> <p>17 A Yes.</p> <p>18 Q Okay. Do you know when was the first time that you laid</p> <p>19 eyes on the FME air permit for the Beloit plant?</p> <p>20 MR. HERRMANN: Object to foundation. You can</p> <p>21 answer the question.</p> <p>22 THE WITNESS: Okay.</p> <p>23 A I don't remember the exact time, no, sir.</p> <p>24 BY MR. DeGEORGE:</p> <p>25 Q Okay. But you have seen it?</p>	<p>1 prepared it?</p> <p>2 A No, sir.</p> <p>3 Q No? All right.</p> <p>4 (Exhibit 30 was marked for identification.)</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Mr. Plewa, you've now been handed what has been marked</p> <p>7 as Defendant's Exhibit Number 30 and I want to ask you a</p> <p>8 couple questions about the email you sent to Julie</p> <p>9 Mosley with a copy to Mike Golda, G-o-l-d-a, on</p> <p>10 August 28, 2008, so it may be helpful for you to just</p> <p>11 read to yourself the text of your email.</p> <p>12 A Okay.</p> <p>13 Q Well, I guess first of all, do you remember this email</p> <p>14 that you sent to Ms. Mosley on August 28th, 2008?</p> <p>15 A I don't remember it specifically.</p> <p>16 Q Do you have any reason to dispute that this is an email</p> <p>17 that you sent to Julie Mosley?</p> <p>18 A No, sir.</p> <p>19 Q Okay. You opened the email by saying, "Julie, During</p> <p>20 our conversation last Thursday, 8/21/08, I mentioned</p> <p>21 that our expected fuel usage through the remainder of</p> <p>22 2008 would be approximately 28,000 gallons of diesel</p> <p>23 fuel."</p> <p>24 Do you remember that discussion with Ms. Mosley?</p> <p>25 A Vaguely.</p>

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<p>1 Q Your next sentence says, "I am curious to know, should 2 we run over this amount, would we still be in compliance 3 with your current air permit?"</p> <p>4 Am I correct in inferring from these two sentences 5 that as of August 21, 2008, when you had 6 this -- apparently had this discussion with Ms. Mosley, 7 that you were aware that FME's air permit had a fuel 8 limitation in it?</p> <p>9 A Yeah.</p> <p>10 Q Okay. 11 (Exhibit 31 was marked for identification.)</p> <p>12 BY MR. DeGEORGE:</p> <p>13 Q Mr. Plewa, you've been handed what's been marked as 14 Defendant's Exhibit 31. The first email is from 15 Ms. Mosley to you on August 29 at 8:56 a.m. and it says, 16 "We will not have any sort of problem with fuel usage 17 limitations in 2009." But then she in the top email 18 that she sent to you at 10:55 a.m., she corrected 19 herself and said she meant to refer to 2008, do you see 20 that?</p> <p>21 A Yes, sir.</p> <p>22 Q Okay. And is it your understanding that that was what 23 she meant, at the time you understood that she was 24 talking about 2008, not 2009?</p> <p>25 A Yes.</p>	<p>1 A Yes, sir.</p> <p>2 Q Which is an email that you sent to Ms. Mosley on 3 September 2, 2008, and it reads -- your email reads 4 "Julie, Please see the attached documented notes from 5 our conversation on 8/21/08 along with a few of my 6 observations in regards to environmental health and 7 safety."</p> <p>8 Do you recall sending this email to Ms. Mosley?</p> <p>9 A Yeah.</p> <p>10 Q And you recall sending to Ms. Mosley the documented 11 notes attached to the email?</p> <p>12 A Yeah.</p> <p>13 Q And are these notes attached to the email which are 14 FME pages 531 and 532, are these notes that you 15 prepared?</p> <p>16 A Yes.</p> <p>17 Q And these notes are reflective of a discussion that you 18 and Ms. Mosley had on August 21, 2008, correct?</p> <p>19 A Yes, sir.</p> <p>20 Q I'd like to ask you a couple of questions on your notes 21 from the section headed Environmental which begins on 22 the bottom of page FME 531, are you with me?</p> <p>23 A Yes, sir.</p> <p>24 Q By the way, when I asked you what documents you reviewed 25 in preparation for your deposition, you made specific</p>
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<p>1 Q Okay. Now, your email to Ms. Mosley on August 29th 2 at 9:07 a.m. indicates that you had spoken with Mike 3 Golda and that he stated, quote, "It is highly probable 4 that AVL could be testing four engines next year and 5 running all four engines simultaneously at the same 6 time."</p> <p>7 Is that a discussion you recall having with 8 Mr. Golda?</p> <p>9 A Yeah.</p> <p>10 Q And then it says, "This should be considered during 11 your air modeling for your air permit -- permits 12 revision."</p> <p>13 Tell me as best as you can recall what your 14 understanding was at that time as to any possible 15 revisions to FME's air permit?</p> <p>16 A Ms. Mosley had stated to me that they were in the 17 process of revising their current air permits and that 18 she was -- she wanted to know what we would be testing 19 out there or what our plan was to test out there so that 20 she could include the -- for that -- that for the fuel 21 burn usage also.</p> <p>22 (Exhibit 32 was marked for identification.)</p> <p>23 BY MR. DeGEORGE:</p> <p>24 Q Mr. Plewa, you've been handed what has been marked as 25 Defendant's Exhibit 32. Is that correct, 32?</p>	<p>1 reference to a document. Is this the one you were 2 referring to or was --</p> <p>3 A Yes, sir.</p> <p>4 Q -- it something else? This is it?</p> <p>5 A Yes.</p> <p>6 Q This section entitled Environmental, the first bulleted 7 point states "FM current air permit is adequate to 8 complete testing through 2008 based on AVL estimated 9 diesel fuel usage of approximately 28,000 gallons 10 through December 2008."</p> <p>11 Is it your recollection that 28,000 gallons, 12 roughly, would be what F -- what AVL would expect to 13 have burned through the end of 2008 in the OP building 14 with relation to its testing, engine testing?</p> <p>15 A Yes, 28,000 gallons, yes.</p> <p>16 Q Okay. Then the next bulleted item says "FM will 17 conduct additional air modeling in order to revise the 18 current air permit to accommodate required testing for 19 2009."</p> <p>20 Am I correct to infer from that sentence that you 21 understood on August 21, 2008, when you had this 22 discussion with Ms. Moley -- Ms. Mos -- Ms. Mosley that 23 Fairbanks Morse's current permit was inadequate to 24 accommodate the level of engine testing that F -- that 25 AVL anticipated in 2009, that a revision to the permit</p>

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<p>1 was going to be necessary?</p> <p>2 A Could you rephrase that?</p> <p>3 Q Yes. This -- these documented notes are reflective of a</p> <p>4 conversation you had with Ms. Mosley on August 21, 2008,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q All right. And the bulleted item that we're talking</p> <p>8 about here says that "Fairbanks Morse will conduct</p> <p>9 additional air modeling in order to revise the</p> <p>10 current air permit to accommodate required testing for</p> <p>11 2009."</p> <p>12 Now, when you say required testing for 2009, you're</p> <p>13 referring to AVL's testing, right?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. And you are saying in this sentence that it will</p> <p>16 be necessary for the Fairbanks Morse air permit to be</p> <p>17 revised in order to accommodate the level of testing</p> <p>18 that AVL intended to perform at the Beloit plant in</p> <p>19 2009?</p> <p>20 A I'm not making that speculation in that sentence.</p> <p>21 Q Okay.</p> <p>22 A This is something that Fairbanks Morse was already in</p> <p>23 the process of doing.</p> <p>24 Q Right. But you understood that the permit as it stood</p> <p>25 on August 21, 2008, was inadequate to accommodate,</p>	<p>1 Defendant's Exhibit 33 and I want to just ask you a</p> <p>2 couple of questions about the email at the bottom of the</p> <p>3 first page and the top of the second page that you sent</p> <p>4 to Julie Mosley on February 25, 2009, do you see that</p> <p>5 email?</p> <p>6 A Yes, sir.</p> <p>7 Q Do you recall sending her this email?</p> <p>8 A Not offhand, no.</p> <p>9 Q Okay. Do you have any reason to question whether you</p> <p>10 sent her this email?</p> <p>11 A No, sir.</p> <p>12 Q The first sentence says, "AVL is currently working on</p> <p>13 quoting a project that if we get will involve utilizing</p> <p>14 your facility."</p> <p>15 And "your facility," were you referring to what was</p> <p>16 commonly referred to as the OP building?</p> <p>17 A I was just -- just their facility, I wasn't specific to</p> <p>18 a building in this sentence, it was just Fairbanks</p> <p>19 Morse.</p> <p>20 Q Was it your understanding at that time that there were</p> <p>21 multiple buildings at the Beloit plant?</p> <p>22 A Sure, yes.</p> <p>23 Q Okay. And was it your understanding that -- did you</p> <p>24 have an understanding as to which building or buildings</p> <p>25 AVL would be testing large engines in?</p>
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<p>1 that's your word, the level of testing that AVL</p> <p>2 anticipated for the year 2009?</p> <p>3 A No.</p> <p>4 Q So it was your under -- was it then your understanding</p> <p>5 that the permit as it existed on August 21, 2008,</p> <p>6 was already adequate to accommodate the level of</p> <p>7 testing that FME anticipated -- that AVL anticipated for</p> <p>8 2009?</p> <p>9 A It was my understanding that 2008 was good and they were</p> <p>10 already in process of doing a revision for 2009, not</p> <p>11 specifically just for AVL --</p> <p>12 Q Right.</p> <p>13 A -- they were doing it for somebody else --</p> <p>14 Q Right.</p> <p>15 A -- for themselves.</p> <p>16 Q But you understood that the permit absent a revision</p> <p>17 would not allow AVL to perform the level of testing that</p> <p>18 it anticipated performing at the Beloit plant in the</p> <p>19 year 2009?</p> <p>20 A Yeah.</p> <p>21 Q Yes?</p> <p>22 A Yes.</p> <p>23 (Exhibit 33 was marked for identification.)</p> <p>24 BY MR. DeGEORGE:</p> <p>25 Q Mr. Plewa, you've been handed what has been marked as</p>	<p>1 A I knew the OP was one, but I wasn't sure about the other</p> <p>2 ones.</p> <p>3 Q Okay. Now, on the next page, which is FME 3090, your</p> <p>4 email goes on to say, "The three items of concern right</p> <p>5 now are particulate matter, sulfur, and opacity limits."</p> <p>6 And the next sentence says, "In reviewing your current</p> <p>7 permit, I was able to find our limits for sulfur and</p> <p>8 opacity for test sites P 20, P 21 and P 22. However,</p> <p>9 unless I'm just clearly overlooking the limit, I cannot</p> <p>10 find the limit for PM for these test sites."</p> <p>11 Is that -- did I read accurately what your email to</p> <p>12 Ms. Mosley said?</p> <p>13 A Yes.</p> <p>14 Q So at this point, which is February 25, 2009, you</p> <p>15 obviously had a copy of the permit?</p> <p>16 A Yes.</p> <p>17 Q Okay. And this was the permit for the OP building,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q Were you also looking at the permit for the other</p> <p>21 building?</p> <p>22 A Yeah, there's -- it's very confusing, but yes.</p> <p>23 Q Okay. But the permit you're referring to here is the</p> <p>24 permit for the OP building?</p> <p>25 A Yes.</p>

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<p>1 Q Now, we know by this email that by February 25 of 2009, 2 you had the permit. 3 A Um-hmm, yes. 4 Q Do you recall how long you might have had it or where 5 you got it from? 6 A I remember getting it from the DNR, the Wisconsin DNR 7 website. I don't recall when I got it, though. 8 Q But it was freely available to the public on the DNR 9 website, correct? 10 A Yes, sir. 11 Q And you could have gotten it any time you wanted it? 12 A Yes, sir. 13 MR. DeGEORGE: I don't have any further questions. 14 Thank you. 15 THE WITNESS: You're welcome. 16 E X A M I N A T I O N 17 BY MR. HERRMANN: 18 Q I do have just a few questions for you, Mr. Plewa. 19 If you could return to Defendant's Exhibit 32. And 20 if you could turn to the second page where Mr. DeGeorge 21 was discussing the heading Environmental, do you see 22 that? 23 A Yes, sir. 24 Q In the second bullet point, do you see the sentence 25 beginning at the end of that second bullet point that</p>	<p>1 A I believe so. Yes. 2 Q Did you understand from your review of that permit 3 whether it was or was not sufficient for the testing AVL 4 anticipated conducting in 2009? 5 A I couldn't determine that. 6 Q Okay. So with respect to this second bullet point under 7 Environmental, where did your understanding come from of 8 whether or not the permit was sufficient to conduct 9 testing in 2009 for AVL? 10 A From Julie Mosley. 11 Q And what did she say to you about that? 12 A She had discussed that they were -- I keep going back 13 to that they were in the process of updating their 14 current air permit for themselves, so they were just 15 going to include these four engines for AVL in this new 16 update. 17 Q Did Ms. Mosley at any time after this August 21st 18 discussion ever tell you that AVL could not proceed with 19 testing up to four engines in 2009? 20 A I don't recall. 21 Q Did anyone, any representative of FME ever at any time 22 tell you that AVL could not proceed to test four engines 23 in 2009? 24 A I don't recall ever hearing -- anybody ever telling me 25 anything.</p>
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<p>1 flows on to the next page, "AVL does anticipate running 2 up to four engines at once in 2009"? 3 A Yes, sir. 4 Q Do you see that? 5 A Um-hmm. 6 Q Now, when you prepared these notes of your discussion 7 with Ms. Mosley, was it your understanding that the 8 required testing for 2009 would have included those four 9 engines running? 10 A Yes. 11 Q Okay. And at this point in time, this August 21st, 12 2009, discussion with Ms. Mosley, had you at that time 13 had access to the FME air permit? 14 A Are you asking if I had it -- 15 Q Correct. 16 A -- or did I -- I had access to it. I mean, like we -- I 17 said at the -- 18 Q No, I'm -- 19 A -- beginning -- 20 Q -- asking if you had -- 21 A Did I have it at that time? 22 Q Correct. 23 A I don't recall. 24 Q Had you reviewed it at any time prior to this 25 August 21st discussion with Ms. Mosley?</p>	<p>1 MR. HERRMANN: I have no further questions. 2 R E - E X A M I N A T I O N 3 BY MR. DeGEORGE: 4 Q I have a couple more. So now you think you did read the 5 permit by August of 2008. So before AVL signed the 6 master agreement on August 28th of 2008, having read the 7 permit, you knew that no more than 30,333 gallons of 8 diesel fuel could be burned in the OP building per 9 month, correct? 10 A I didn't know directly what could be burned or what 11 couldn't be just by looking at the permit. You have to 12 base what can be done off of their current fuel usage 13 records, so just by looking at the air permit, I could 14 not determine that. 15 Q So you're saying that by reading the air permit, you had 16 no way of determining whether there was a maximum amount 17 of 30,333 gallons allowed to be burned in the 18 OP building per month? 19 A I don't recall seeing that in the permit. 20 Q Did Ms. Mosley or anyone else at AVL ever promise you 21 that they would secure from Wisconsin DNR a new permit 22 or a revision to their existing permit? 23 MR. HERRMANN: Object to form. You can answer. 24 THE WITNESS: Okay. 25 A Nothing specific.</p>

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1 MR. DeGEORGE: Okay, I have nothing further. Thank	1 DEPOSITION ERRATA SHEET
2 you.	2
3 THE WITNESS: Thank you.	3
4 MR. HERRMANN: Thank you, I have nothing further.	4 Case Caption: AVL Powertrain Engineering, Inc.
5 We'll reserve the read and sign privilege.	5 vs. Fairbanks Morse Engine
6 VIDEOGRAPHER: This concludes the deposition of	6
7 Steve Plewa consisting of one disk. We are going off	7 October 14, 2015, deposition of STEPHEN PLEWA
8 the record. The time is 3:23 p.m.	8
9 (Deposition concluded at 3:23 p.m.)	9 DECLARATION UNDER PENALTY OF PERJURY
10 * * *	10
11	11 I declare under penalty of perjury that I have read the
12	12 entire transcript of my deposition taken in the captioned
13	13 matter or the same has been read to me, and the same is true
14	14 and accurate, save and except for changes and/or corrections,
15	15 if any, as indicated by me on the DEPOSITION ERRATA SHEET
16	16 hereof, with the understanding that I offer these changes as
17	17 if still under oath.
18	18 Signed on the ____ day of _____, 2015.
19	19
20	20
21	21 _____
22	22 STEPHEN PLEWA
23	23
24	24
25	25
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1 State of Michigan)	1 DEPOSITION ERRATA SHEET
2 County of Oakland)	2 Page No. ____ Line No. ____ Change to: _____
3 Certificate of Notary Public - Court Reporter	3 _____
4	4 Reason for change: _____
5 I certify that this transcript is a complete, true, and	5 Page No. ____ Line No. ____ Change to: _____
6 correct record of the testimony of the witness held in this	6 _____
7 case.	7 Reason for change: _____
8	8 Page No. ____ Line No. ____ Change to: _____
9 I also certify that prior to taking this deposition, the	9 _____
10 witness was duly sworn or affirmed to tell the truth.	10 Reason for change: _____
11	11 Page No. ____ Line No. ____ Change to: _____
12 I further certify that I am not a relative or an	12 _____
13 employee of or an attorney for a party; and that I am not	13 Reason for change: _____
14 financially interested, directly or indirectly, in the	14 Page No. ____ Line No. ____ Change to: _____
15 matter.	15 _____
16	16 Reason for change: _____
17 I hereby set my hand this ____ day of _____, 2015.	17 Page No. ____ Line No. ____ Change to: _____
18	18 _____
19	19 Reason for change: _____
20 	20 Page No. ____ Line No. ____ Change to: _____
21	21 _____
22 Elizabeth G. LaBarge, CSR-4467	22 Reason for change: _____
23 Certified Shorthand Reporter	23
24 Notary Public, Wayne County, Michigan	24 SIGNATURE: _____ DATE: _____
25	25 STEPHEN PLEWA

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3	_____
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16	Reason for change: _____
17	Page No. _____ Line No. _____ Change to: _____
18	_____
19	Reason for change: _____
20	Page No. _____ Line No. _____ Change to: _____
21	_____
22	Reason for change: _____
23	
24	SIGNATURE: _____ DATE: _____
25	STEPHEN PLEWA

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